

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.14116 of 2016
and W.P.No.14117 of 2016

S.Rajarethinam ...Petitioner in W.P.No.14116 of 2016

A.Kalaiselvan ...Petitioner in W.P.No.14117 of 2016

Vs.

1.The State of Tamil Nadu
rep.by Principal to Government,
Commercial Taxes and Registration Department,
Secretariat,
Fort St. George,
Chennai-9.

2.The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai-5.

...Respondents in both petitions

Prayer in W.P.No.14116 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 2nd respondent to immediately dispose of the petitioner's representations dated 16.03.2016 and 03.04.2016 in the light of the judgments of this Hon'ble Court dated 27.11.2014 in the case of S.Abdul Salam Sahib Vs. K.Parameshwari (WA Nos.2583 of 2012 etc.,) and R.Govindasamy Vs. Chief Engineer (2014 (1) MLJ 562).

Prayer in W.P.No.14117 of 2016: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 2nd respondent to immediately dispose of the petitioner's representations dated 14.03.2016 in the light of the judgments of this Hon'ble Court dated 27.11.2014 in the case of S.Abdul Salam Sahib Vs. K.Parameshwari (WA Nos.2583 of 2012 etc.,) and R.Govindasamy Vs. Chief Engineer (2014 (1) MLJ 562).

For petitioners : Mr.A.Edwin Prabhakaran
for M/s.Swarnam Rajagopal
in both petitions

For Respondents : Mr.Manoharan Sundaram
Additional Government Pleader
(Taxes)
in both petitions

COMMON ORDER

These petitions have been filed, seeking for directions to the 2nd respondent to dispose of the petitioners' representations, in the light of the judgments of this Court dated 27.11.2014, in WA Nos.2583 of 2012 etc., in the case of S.Abdul Salam Sahib Vs. K.Parameshwari and R.Govindasamy Vs. Chief Engineer reported in 2014 (1) MLJ 562.

2.The learned counsel appearing for the petitioners submitted that the petitioners joined as Junior Assistant and they are serving as Assistant Commissioner from the year 2010. Their names were considered for promotion to the next higher post of Deputy Commissioner in the year 2015 and accordingly, included in the panel for promotion to the post of Deputy Commissioner for the year 2014-2015, vide G.O.Ms.No.40, dated 10.03.2015. The said panel could not be operated, due to the interim order passed by this Court in W.P.Nos.3640, 7858 and 9926 of 2015, batch etc.,. Subsequently, the said interim order was vacated by the Hon'ble I Bench of this Court on 30.03.2016, by paving the way for effecting promotions based on the panel. However, both the petitioners were informed by the 2nd respondent that they would not be given promotion, due to the pendency of the charge memos issued against the petitioners on 18.02.2016 and 16.03.2015, respectively, i.e., after the crucial date for the promotion for the year 2015 namely, 01.01.2015 and much after inclusion of the name of the petitioners in the promotion panel drawn, under Rule 4 of the Tamil Nadu State and Subordinate Service Rules. In this background, it is contended that when the names of the petitioners were included for the promotional post of Deputy Commissioner for the year 2014-2015, vide G.O.Ms.No.40, dated 10.03.2015, no charge was pending against the petitioners. The said charge memos were issued on 18.02.2016 and 16.03.2015, respectively. Hence, the respondents cannot deny the benefit of promotion to the petitioners. In support of his contentions, the learned counsel appearing for the petitioners has also relied upon the Judgments of this Court dated 27.11.2014, in the case of S.Abdul Salam Sahib Vs. K.Parameshwari (WA Nos.2583 of 2012 etc.,) and R.Govindasamy Vs. Chief Engineer reported in 2014 (1) MLJ 562. It is further

submitted that when the names of the petitioners have already been included in the panel for the year 2014-2015, the same cannot be interfered with, by issuance of any charge memo, i.e., much after the crucial date for promotion for the year 2015, i.e., 01.01.2015. Therefore, he has sought for a direction to the respondents to consider the representation of the petitioners, in the light of the Judgments of this Court dated 27.11.2014, in the case of S.Abdul Salam Sahib Vs. K.Parameshwari (WA Nos.2583 of 2012 etc.,) and R.Govindasamy Vs. Chief Engineer reported in 2014 (1) MLJ 562.

3.The learned Additional Government Pleader appearing for the respondents sought for a reasonable time to consider the same.

4.Considering the submissions made on either side, the representation given by the petitioners pending on the file of the 2nd respondent deserves to be considered, because the panel was drawn on 10.03.2015, including the name of the petitioners for the year 2014-2015. Admittedly, on 01.01.2015, being the crucial date and no charge was pending, there was no impediment to include the name of the petitioners in the said panel and therefore, the name of the petitioners were included. Subsequently, after one year from the date of crucial date, the charge memo was issued on 18.02.2016 to the petitioner in W.P.No.14116 of 2016 and the charge memo dated 16.03.2015 was issued to the petitioner in W.P.No.14117 of 2016. Therefore, as per the ratio laid down by this Court mentioned supra, the representations of the petitioners should be considered. It is relevant to extract a relevant portion of the Judgment of the Division Bench of this Court as follows:

"It cannot be disputed and it is also admitted by the parties that as on the crucial date, namely 01.03.1987, no charge memo had been issued and only thereafter, but before the publication of the regular panel dated 18.10.1987, he was issued with a charge memo dated 18.08.1987. As rightly contended by the learned counsel for the appellant in W.A.No.2583/2012, since no charge was pending on the crucial date, his name ought not to have been omitted and he should have been included in the panel for the year 1987. Even though a person's name is included in the panel for promotion, if a punishment is imposed before the actual date of promotion, there can be no infirmity in denying promotion, because during the currency of the punishment and during the check period, one cannot claim to be promoted even though his name appears in the panel for promotion."

5.Since the 2nd petitioner Mr.A.Kalaiselvan is going to retire from service by 30.06.2016, the 2nd respondent is hereby directed to consider the representations of the petitioners, in the light of the Judgments passed by this Court dated 27.11.2014, in the case of S.Abdul Salam Sahib Vs. K.Parameshwari in WA Nos.2583 of 2012 etc., and R.Govindasamy Vs. Chief Engineer reported in (2014 (1) MLJ 562) and pass orders on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this order.

Accordingly, these Writ Petitions are disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Principal to Government,
State of Tamil Nadu,
Commercial Taxes and Registration Department,
Secretariat,
Fort St. George,
Chennai-9.

2.The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai-5.

+2cc to M/s.Swarnam Rajagopal, Advocate Sr.23945
+1cc to the Government Pleader Sr.23712

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and W.P.No.14117 of 2016

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srg 26/04/2016